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COMMITTEE ON THE RIGHTS OF THE CHILD

Twenty-eighth session

SUMMARY RECORD OF THE 732nd MEETING

Held at the Palais Wilson, Geneva,
on Monday, 1 October 2001, at 3 p.m.

Chairperson: Mr. DOEK

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Second periodic report of Portugal (continued) (CRC/C/65/Add.11; CRC/C/Q/POR/2; written replies of the Government of Portugal to the questions in the list of issues (document without a symbol distributed in the meeting room in English only))

1. At the invitation of the Chairperson, the members of the delegation of Portugal resumed places at the Committee table.

2. Mr. RIBEIRO DA COSTA (Portugal) said that the age ranges which had been used to present consolidated HIV/AIDS data were the ones used by the World Health Organization (WHO) collaborating centre for AIDS and sexually transmitted diseases in Paris, the Alfred Fournier Institute. However, data solely up to age 18 could be made available to the Committee.

3. Ms. MOURAO (Portugal) provided figures for the Ministry of Labour and Solidarity's budget for disabled people from 1998 to 2001 and said that the 340 non-governmental organizations (NGOs) operating in Portugal, including in the autonomous regions of Madeira and the Azores, were fully supported in their efforts to assist the disabled. If necessary, data would be provided to the Committee on technical assistance pertaining to the housing, rehabilitation, and educational needs of the disabled.

4. Mr. DOS SANTOS PAIS (Portugal), referring to respect for the views of the child, said that decree law No. 270/98 stipulated that children were to be heard in matters concerning them and that decree law No. 115-A/98 relating to the autonomy of schools provided for student participation in school councils and assemblies. Corporal punishment was strictly forbidden in both public and private schools. Replying to a question about guidelines for training at the local level, he said that several activities were conducted at local and regional levels involving schools, municipalities and the Department of Social Security Systems, in line with the provisions of the Convention.

5. Mr. FERREIRA (Portugal) said that youths were considered to be persons between 15 and 29 years, but many programmes and activities actually targeted a wider age range starting from the age of 12. Young people's views were actively sought for the purposes of youth policy formulation. The Youth Advisory Council comprised NGOs, youth representative organizations, community associations and associations working with young people; it advised the Government on issues relating to youth policy and the civic, social and economic integration of young people into society. The Council's agenda which was set by the chairperson in consultation with the members, had in 2000 included, education, vocational training, employment, drug addiction and financial support for public universities. Other bodies advising the Government on youth-related issues were the National Youth Council and the Portuguese Youth Institute, the latter consisting of 18 regional delegations, each with a regional youth advisory council comprising young people from the region. In 1999, children between 14 and 16 had been granted, by law, the right to found associations; children under 14 could do so only with parental permission.

6. Ms. ALBUQUERQUE (Portugal), replying to questions relating to protection of children from sexual exploitation, said that the initial report of Portugal, which pre-dated the revision of the Penal Code, outlined the situation concerning sex crimes and gave some indication of how the Penal Code would be revised to take account of such matters. The age of sexual consent was 14 years, and sex crimes against children of 14 years and under were punishable, under the Penal Code, by imprisonment of up to 10 years. Exposing children 14 years and under to obscene material or discourse, or involving them in pornographic photographs or films was punishable by sentences of up to three years. Article 173 of the Penal Code stipulated that if a child 16 years or younger was subjected to any such act by a person who was the child's legal guardian, the sentence could be increased to 8 years. Other articles of the Penal Code prohibited and punished, by sentences of up to 10 years, other forms of sexual abuse, including homosexual acts, as well as child prostitution.

7. The State party had actively participated in the discussions relating to the Optional Protocol on the sale of children, child prostitution and child pornography, which it had signed at the Millennium Summit in 2000; the ratification of the Protocol was in its final stages. It was the Government's intention, after ratification, to incorporate the provisions of the Protocol into domestic legislation.

8. Ms. FONSECA (Portugal), said that the system of special protection of 16-18 year-olds was based on the best interests of the child, the responsibility of the family, State and society in general towards children and the State's obligation to disseminate information concerning the rights of children and parents. Such children came under the jurisdiction of the family and juvenile courts, and protection was assured for children who had been abused. The justice system was not merely punitive, but aimed to educate children for life in the community; a child who committed a crime but was in need of protection was entrusted to the child protection system rather than the judicial system. Similarly, in certain cases, a court could use its discretion not to enforce a measure when that was in the child's best interests. Measures were constantly monitored; court measures were reviewed after one year of implementation and other institutional measures after six months.

9. Certain new measures had been introduced into the system, with the guidelines remaining the best interests of the child and minimum intervention in order to preserve the child's autonomy: institutionalization was a last resort. The measures included, first warnings, with emphasis on community service. Where institutional detention was concerned, the closed regime - the most severe - did not apply to children under 14 years of age. It was the court's responsibility to monitor measures, but they could request other relevant authorities to do so and also to prepare periodic reports on the exercise of children's rights.

10. Children in conflict with the law had the right to be heard and to benefit from the participation of family members at all stages of judicial proceedings; children had the right not to answer any questions, as well as to have a child psychologist present, especially when it came to matters touching on their character and personality; they had the right to meet with an attorney in private, to request documents and to lodge an appeal against any judicial decision taken.

11. Young people between 16 and 21 years were subject to a specific regime for "young adults". The courts could not impose penal sanctions on young adults; alternative penalties less

stringent than penalties applied to adults were provided for by the law. Measures under the new laws generally targeted the protection and promotion of children's rights within the family and, in that connection, parental support services were provided and alternative care arranged for where necessary.

12. Mr. DOS SANTOS PAIS (Portugal) said that children's participation in decision-making at the local level was ensured in some municipalities.

13. Ms. C. EMENTE (Portugal) said that ill-treatment of minors, including sex crimes, was punished under article 152 of the Penal Code by imprisonment of up to 5 years, which meant that criminal proceedings were instituted by public prosecutors, as for other crimes of a public nature. The State paid due attention to psychological rehabilitation.

14. Ms. BAPTISTA LOPES (Portugal) said that a hotline was at the disposal of children and parents to report child abuse. Family-focused support services, using multisectoral strategies, were also offered for abused children and abusive parents. In 2000, 1,300 calls had been made to the hotline reporting abuse, of which 3 per cent had pertained to sexual abuse.

15. Mr. DOS SANTOS PAIS (Portugal) said that under the Civil Code, parents and children had a mutual obligation of respect, help and assistance, and that parents had the duty to secure the mental and physical health of their children.

16. Ms. BRÁS GOMES (Portugal) said that in August 2001 a new framework law on social security had strengthened the responsibility of the State to ensure the right to social security. The State must apply equal treatment where situations were equal and must differentiate treatment where situations were not equal. For example, it must grant additional resources to the people in greatest need, and must help eliminate the causes of social exclusion. Various working groups had been set up to implement the new system through three subsystems: one addressing families and individuals with little or no economic means; another for family protection; and a third devoted to the provision of social insurance for employed persons. All three provided benefits without regard to nationality. Under the new law children were entitled to benefits whether or not their parents had contributed to the family protection scheme; eligibility was based solely on residency in the national territory.

17. Under the latest changes in the social security system, amounts of family benefits were calculated on the basis of family income, the number of children and their ages. Nearly 1.5 million people were classified as clearly poor or relatively poor and received the corresponding benefits. Disabled children and young people under 24 who required individual care or attended special educational establishments were provided with additional benefits.

18. The Government had established a guaranteed minimum income scheme to combat poverty. Nearly 40 per cent of the beneficiaries were under the age of 18. One of the effects of the associated social integration programme was the enrolment or re-enrolment in school of thousands of children who otherwise would be excluded. The budget allocated to the scheme had declined by about 25 per cent between 2000 and 2001 because of its success in meeting the needs of the most vulnerable groups and in reducing social exclusion.

19. There were 118 anti-poverty projects in the country, with a specific budget of some 6.7 billion escudos, covering some 25,000 children; three of the projects were specially directed to assist children at risk and five covered Gypsy families.

20. All member States of the European Union were obliged to carry out a National Action Plan against Poverty and Social Exclusion for implementation between 2001 and 2003, which would culminate in a joint assessment. The Plan's objectives in respect of children were to eradicate situations of poverty for children by 2010, to improve the quality of support provided to 15,000 children at risk or with handicaps and to provide holidays at camps for some 1,500 children living in institutions. She presented the Committee with a copy of a publication entitled "From words to action 2000", which included numerous poignant illustrations by children and which reflected the Government's efforts to involve the poor in combating poverty.

21. Ms. FONSECA (Portugal) said that the courts were responsible for monitoring placement of children in institutions through periodic reports, visits to centres and interviews with children and caregivers. In 2000, some 2,000 children had been placed with alternative families.

22. Ms. CLEMENTE (Portugal) said that there were no statistics currently available concerning the number of children in social welfare institutions, but that about 70 per cent of children were in fact placed in their own families. The Adoption 2000 programme launched in 1997 had been completed and had achieved all of its objectives, including the amendment of legislation to improve guarantees for children and parents and the establishment of multidisciplinary teams specially trained in matters related to adoption. A number of other programmes were being implemented with the aim of providing family support, such as parental and civic education and child care. All such programmes and policies, as well as the general follow-up of the Convention, were coordinated by the National Commission for the Protection of Children and Young People at Risk.

23. Ms. ROCHA (Portugal) said that the witness protection measures originally intended for cases involving terrorism or drug trafficking had recently been extended to cover persons who testified in cases of violent crime in which the life or physical or psychological integrity of the witnesses would be in danger. In 2000 a law had been adopted qualifying domestic violence as a public crime, meaning that the prosecutor could initiate proceedings without the consent of the victim. However, the prosecutor could also suspend such proceedings if the victim so requested. Since 1998, the authorities had had the right to evict the aggressor in cases of domestic violence. However, that measure had not yet been invoked, for cultural reasons.

24. Adoption was a drastic, last resort when relations were very poor between the child and parents and the family links had to be severed. Only a court could finalize adoptions, through a specific procedure. Temporary placement in foster families was preferable, and was used when the experts maintained the hope that the family could be reunited in the future.

25. Mr. DOS SANTOS PAIS (Portugal), replying to Ms. Al-Thani said that the statistical information in the report related to accidents in general, and not specifically to road accidents. Road accidents were a major concern of the Government. A new Highway Code was about to enter into force and would lower the acceptable blood alcohol rate from 0.5 grams to 0.2 grams per litre. It would also improve monitoring of drug use among drivers. The authorities applied a

"zero tolerance" programme at times of increased traffic, such as holidays and vacation periods. The Government was also taking preventive measures, including the organization of educational sessions on road safety and accident prevention carried out by health workers at primary and secondary schools. An NGO had been particularly active in raising awareness of accident prevention among schoolchildren.

26. Schools and governmental organizations raised awareness of children's rights at the primary, secondary and higher education levels using publications and posters, and their efforts had had a particularly noticeable effect on immigrant and minority communities.

27. Ms. LABESCAT (Portugal) said that non-discrimination was a basic principle of Portuguese constitutional law. The law ensured the same rights to public services to everyone, regardless of ethnic origin, race, colour or nationality. Illegal aliens were provided with health care, social security benefits and education without any discrimination. In April 2000 the Government had adopted a programme for the equality and insertion of Gypsies, which included vocational training, educational initiatives and intercultural activities. Of the six NGOs represented in the Working Group for the Equality and Insertion of Gypsies, two worked with Gypsy communities and the other four were Gypsy organizations. The Government had established posts of social and cultural mediators to assist in the integration of immigrants and minorities. The Commission for Equality and against Racial Discrimination had been established as an independent body to ensure that discrimination was combated, and it included a number of representatives of NGOs. The Government's immigration policy was aimed at combating illegal immigration, in part through the regularization of illegal aliens. There were no problems in Portugal with religious minorities.

28. Mr. DOS SANTOS PAIS (Portugal) cited the Civil Code to the effect that parents must, in accordance with the age of their children, take into consideration the opinions of their children in business matters and must recognize their autonomy in the organization of their lives.

29. Ms. BAPTISTA LOPES (Portugal) said that children between the ages of 9 and 11 might be confined to institutions for minors because they had been victims of ill-treatment, had displayed behaviour indicative of delinquency such as begging or vagrancy or had committed crimes. The minimum age for placement in such institutions had been 9 years until 1 January 2001, when it had been raised to 12. However, that age limit did not apply to children with psychological problems who had been placed in medical-psychological institutions.

30. The privacy of minors in institutions was protected. They could not be photographed, filmed or otherwise recorded in a manner that would identify them, and they could not be forced to give interviews to the press. They had the right to maintain contact with the outside world through letters, phone conversations and visits, and could send and receive parcels. Minors were encouraged to correspond with their friends and family, and their right to confidentiality in correspondence was ensured as long as there was no well-founded fear that the correspondence might be harmful to the minors or third parties. Only a court could waive the right to confidentiality in correspondence, on the recommendation of the institution's director.

31. Ms. CLEMENTE (Portugal) said that children in welfare institutions had the right to private and regular contact with family and friends, to their own personal space and a degree of autonomy appropriate to their age and circumstances and to confidentiality in their contacts with public prosecutors, judges and lawyers.

32. Mr. DOS SANTOS PAIS (Portugal) added that, as a rule, the privacy of the child's correspondence must be respected in the home too, although any disputes over the matter should be settled within the family.

33. Ms. ROCHA (Portugal) said that, under Law No. 84/95, which was based on a proposal made by two non-governmental organizations, parents could opt for joint custody of their child. Following the adoption of that law by Parliament, family mediation centres had been set up by decree of the Ministry of Justice. The centres were staffed by specially trained psychologists, social workers and lawyers whose professional opinion had to be taken into account before joint custody could be granted.

34. Mr. DOS SANTOS PAIS (Portugal) said that it was compulsory for teachers, health workers and all professionals working with children to report suspected cases of child abuse or neglect. Theoretically they were not covered for civil liability if they made a misdiagnosis, but in practice, as professionals, they did not set the reporting procedures in motion without good cause.

35. Ms. FONSECA (Portugal) said that the public prosecutor, not the court, decided whether a charge against a child was serious enough to merit prosecution.

36. The CHAIRPERSON invited members of the Committee to ask questions about basic health and welfare, education, leisure and cultural activities and special protection measures.

37. Ms. TIGERSTEDT-TÄHTELÄ said that, in general, the Portuguese Government had been very active in setting up commissions but it was difficult for the members of the Committee to evaluate the impact of the commissions' work. She would like to know, for example, whether they were permanent bodies or had a time limit built into their mandate. It was also difficult to assess the effectiveness of the cooperation between the private and public sectors in the areas of health and education. What were the arrangements for checking standards in pre-primary schools and health centres where the private sector was involved?

38. With regard to poverty, she would like to know whether the Government used a particular definition of the poverty line and, if so, how many children were living below it. She welcomed the changes introduced in the social security system but wondered what the Government was doing about the slum conditions in which some people in urban areas were living. She would have preferred it if the Government had concentrated, in its written replies, on the legislation already in force in Portugal, rather than on how its anti-poverty strategy fitted in with a European Union-wide strategy. She found it hard to believe that the numbers of people living in poverty were as low as the figures on means-tested social security payments suggested.

39. Turning to the question of the Roma, she said no details had been given of the outcome of the studies on them mentioned in the report, even though a new commission had since been

set up to deal with the question. With over half of Roma children under the age of 14 not attending school, it was to be expected that the Government would be targeting them for assistance, at least by providing teaching in their own language or help in learning Portuguese as a second language. What percentage of Roma children went on to secondary education?

40. With regard to basic health care, she would like to know whether the network of health centres covered the whole country and whether treatment was free of charge. If a person had to seek private medical care, were the costs of such care reimbursed by social security? She noted that abortion was illegal even, apparently, when the pregnant woman's mental or physical health was threatened by a pregnancy resulting from rape; she wondered whether the delegation saw that as a problem. There was room for improvement in sex education, particularly to promote safe sex, and she would be interested to hear of any initiatives the Government planned to take in that area. She would also welcome an explanation of the discrepancy between the Government's figures and World Health Organization (WHO) figures for AIDS and HIV. She appreciated that it was sometimes difficult to collect statistics on the health of children belonging to minorities but she suggested that the Government should try to draw on the knowledge of associations working with minorities, who were usually able and willing to help. She wondered whether the high infant mortality rate and the relatively high percentage of children born with a low birth weight were the result of ineffective antenatal and post-natal care.

41. Mr. AL-SHEDDI said he would appreciate any insights into the reasons for the high drop-out rate in schools and sought reassurance that the children of illegal immigrants had the right to, and received, education. He asked for information on the impact of child labour on the education of children working outside the home and on any measures taken in recent years to address the problem of street children.

42. Ms. AL-THANI said that she shared Ms. Tigerstedt-Tähtelä's concerns about the high infant mortality rate and would welcome any insight into its causes; was it the result of a shortage of trained medical staff or of resources? She would also appreciate an explanation of what was meant by a "level 1" hospital and a "central" hospital.

43. Ms. CHUTIKUL asked why the number of pupils repeating a year in school was so high. She would also like to know whether Portugal had been represented at the World Congress against Commercial Sexual Exploitation of Children in Stockholm and, if so, whether the Government had subsequently adopted a plan of action.

44. With regard to the extra-territorial application of Portuguese law, she noted that for "various reasons put forward by the opposition political parties" (CRC/C/65/Add.11, para. 549) the proposed revision of the Penal Code had not been approved. What were those reasons, and could the delegation provide an update on the current situation?

45. Ms. KARP said that her earlier question on the right of children to be heard referred to their right to be heard by the authorities and the courts, not their general right to have a say at home in decisions affecting them.

46. The Government should seriously consider introducing legislation to protect children between the ages of 16 and 18 from commercial sexual exploitation. At the moment, children of

that age could be deemed to have consented to sexual abuse. The same children received no special protection under the juvenile justice system. It should be remembered that they were going through what was often a difficult period of their lives, and she did not see why they should be treated in the same way as adults. She would like to know whether the reforms of the juvenile system would be backed up by adequate resources and staffing levels, for example to provide crisis centres and to ensure there were enough places in the detention centres for children awaiting trial. She would appreciate an update on the practical implementation of the reforms and information on the work carried out by the committee set up by the Ministry of Justice and the Ministry of Solidarity and Social Security.

47. She would also like to hear what steps, if any, the Government was taking to teach parents about alternatives to corporal punishment in the home: had there been any debate on that issue in Portugal?

48. Ms. OUEDRAOGO asked what was being done to help refugee children and the children of asylum-seekers, especially in the fields of health and education, and whether Law No. 15/98 had entered into force. She would welcome information on what the Government was doing to improve the provision of sports lessons in schools.

49. With regard to children's health, she would like to know the number of AIDS orphans in Portugal, what was being done to care for them and whether any follow-up was provided for the orphans returned to Madeira when their parents died. She was concerned at the fairly high rate of teenage pregnancies, which suggested that sex education programmes were ineffective and should be reviewed. The suicide rate was also high enough to be a cause for concern; she wondered whether the Government had developed any prevention programmes to reduce the rate.

50. Mr. CITARELLA said it was difficult to understand why there had been such a sharp fall in spending on education between 1995 and 2000, as shown by the figures in the written replies, when the education system faced such serious problems as the high drop-out rate and the related problem of child labour. Like other members of the Committee, he was concerned at the high infant mortality rate and at the problem of street children, which seemed to be getting worse.

51. The CHAIRPERSON, speaking as a member of the Committee, said he would like to know the reason why, according to the figures in the written replies, the number of disabled children skyrocketed at the age of six. He pointed out that there were discrepancies in the figures on disabled children and urged the delegation to look into them at a later date.

The meeting was suspended at 5.15 p.m. and resumed at 5.25 p.m.

52. Mr. DOS SANTOS PAIS (Portugal) said that some of the national commissions mentioned in the report were interministerial and others had been established by a single ministry. Some were permanent and others disbanded once they had fulfilled their mandate. Almost all of them were responsible for submitting progress reports. For example, a working group had been established in 1997 following a joint decision of the Ministries of Training and Employment, Solidarity and Social Security and Justice, which had led to major changes in the juvenile justice system and had addressed the principal difficulties and shortcomings in the social

protection of children at risk. Replying to a question about the Government's cooperation with the private sector in the fields of health and education, he said that the private sector contributed mainly to pre-school education and nursery services in Portugal, currently providing about a third of the facilities, although the Government was increasing allocations in that area.

53. Ms. BRÁS GOMES (Portugal), referring to the guaranteed minimum income scheme, said that persons considered to be living below the poverty line accounted for about 20 per cent of the population. The National Action Plan against Poverty and Social Exclusion, met the objectives agreed at the Nice European Council in December 2001; although the targets were low, they were measurable and feasible.

54. Mr. DOS SANTOS PAIS (Portugal) said that all children in Portugal had access to health services and education, whether or not they were in an irregular situation.

55. Mr. LABESCAT (Portugal) said that the principle of non-discrimination applied in Portugal, and that refugees were entitled to the same social support as Portuguese citizens, including the right to housing. A Committee for Refugees provided financial aid to refugees when they arrived in Portugal and additional funding was received from the European Refugee Fund. With regard to Gypsies, a Working Group on the Equality and Integration of Gypsies had been established under a Council of Ministers resolution and had submitted a report describing a number of activities being carried out with the participation of NGOs, especially in the fields of education and training. As Gypsies generally spoke Portuguese, they did not have any difficulties regarding language. However, Portuguese language classes were provided for any children whose mother tongue was not Portuguese. Statistics would be provided at a later date. He added that a considerable number of Gypsies were beneficiaries of the Working Group's programme and many received the guaranteed minimum income.

56. Mr. DOS SANTOS PAIS (Portugal) said that health-care services were provided for all persons without discrimination, on payment of a symbolic fee. Those who could not afford that small amount were not obliged to pay. Initiatives were being implemented to improve access to health care in all areas of the country.

57. Mr. RIBEIRO DA COSTA (Portugal) replying to a question about hospital facilities, explained that health care in Portugal was provided by the public sector, the private sector and by charities. The public sector provided primary health care services, health centres, including centres for the treatment of drug addiction, medical schools and special services for treating tuberculosis. He described the different types of hospitals in Portugal, which included large, State-run "central" hospitals that generally used specialized technology and formed part of the university medical schools, the "level 1" district hospitals, which were not so well equipped but were found in all districts and the "level 2" district hospitals, which were small hospitals mainly in rural areas. The private health care system in Portugal was developing, although people generally preferred to use the public system because in many cases it could provide more specialized care.

58. He acknowledged that abortion was a problem in Portugal. The law permitted abortion in certain cases, but the final decision rested with the doctors themselves, many of whom would refuse for ethical reasons.

59. The Government supported the right to sex education as part of the right to education. In 2000, the Government initiated a programme to promote sex education in secondary schools, although it was not seen as a formal discipline. The National AIDS Commission was in the process of implementing a programme with the Ministry of Education to address the issue of AIDS. Efforts were being made to ensure that condoms were distributed freely in schools, although the Government was facing some resistance from parents on that matter. In reply to a question about discrepancies in the AIDS statistics, he explained that it was difficult to obtain accurate figures, as doctors were not obliged to notify the Government about AIDS cases because of privacy laws and were often too busy to fill in the relevant paperwork. Efforts were under way to improve the situation.

60. With regard to infant mortality rates, it was true that the figures provided in the report were not up-to-date; the situation had since improved. The statistics provided on the number of paediatricians were also inaccurate, because many worked in the private sector and did not feature in the figures provided in the report. There was no system in Portugal to register AIDS orphans, although a system had been implemented in Madeira to follow up cases of children with AIDS and the project had been adopted by the National AIDS Commission. More accurate statistics could be provided, especially concerning infant mortality rates.

61. The CHAIRPERSON invited the Committee to make some preliminary concluding observations.

62. Ms. TIGERSTEDT-TAHTELA said that discussion with the Portuguese delegation had been very productive. She welcomed the fact that Portugal had set clear priorities in its second periodic report and had taken the needs of the individual child into account. Portugal had made good progress in fulfilling its obligations under the Convention, and a significant amount of legislation had been introduced, in particular in the fields of juvenile justice and social security. However, she failed to understand how the numerous commissions dealing with children were able to coordinate their activities. The Government also needed to improve its data collection to make it easier to monitor how the Convention was being implemented. The budgetary allocation for children's activities should also be more clearly defined. Finally, she stressed the importance of disseminating information about children's rights and legislation relating to children's rights, and of keeping the public informed of the Government's contact with the Committee on the Rights of the Child.

63. Mr. DOS SANTOS PAIS (Portugal) said that the discussion had highlighted the need for the State party to improve coordination between governmental organizations and NGOs.

64. The CHAIRPERSON said that children in Portugal were well served by their Government, which was endeavouring to make children's rights a reality.

The meeting rose at 6 p.m.